

Assembly Bill No. 2541

CHAPTER 470

An act to amend Sections 120130, 121022, and 121025 of the Health and Safety Code, relating to public health.

[Approved by Governor September 29, 2010. Filed with
Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2541, Portantino. Reporting of certain communicable diseases.

Existing law establishes various communicable disease prevention and control programs. Existing law requires the State Department of Public Health to establish a list of reportable diseases and conditions and authorizes the department to adopt regulations requiring isolation or quarantine for any contagious, infectious, or communicable diseases, if necessary, for the protection of the public health.

Existing law requires the local health officer to report the listed diseases to the department, and requires that, within one year after the establishment of a state electronic laboratory reporting system, reports generated by a laboratory be submitted electronically in a manner specified by the department, except for reports of HIV infections. Existing law requires health care providers and laboratories to report cases of HIV infection to the local health officer using patient names.

This bill would delete the exemption from electronic reporting for HIV infections and would make conforming changes. This bill would require health care providers and laboratories to report cases of HIV infection to the local health officer using patient names and set guidelines regarding such reports. To the extent that this bill would impose additional requirements on a local public health officer and because this bill changes the definition of a crime, this bill would impose a state-mandated local program.

Existing law prohibits the disclosure of public health records relating to HIV and AIDS, and the information contained in those records, with specified exceptions for public health purposes, or pursuant to a written authorization. Existing law requires a disclosure of these records or information to include only the information necessary for the purpose of the disclosure, and to be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization. Existing law imposes civil penalties for the disclosure, whether negligent or willful and malicious, of the content of a confidential public health record, as defined, as well as specified criminal penalties, under certain circumstances.

This bill would expand information disclosure provisions applicable to the information contained in public health records relating to HIV and AIDS, including when the person who is the subject of the record is coinfecting with HIV/AIDS, tuberculosis, and a sexually transmitted disease, as specified. The bill would also increase the maximum civil penalties applicable for the disclosure of the content of a public health record, as specified.

This bill would incorporate additional changes to Section 120130 of the Health and Safety Code proposed by AB 2786, to be operative only if AB 2786 and this bill are both chaptered and become effective on or before January 1, 2011, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 120130 of the Health and Safety Code is amended to read:

120130. (a) The department shall establish a list of reportable diseases and conditions. For each reportable disease and condition, the department shall specify the timeliness requirements related to the reporting of each disease and condition, and the mechanisms required for, and the content to be included in, reports made pursuant to this section. The list of reportable diseases and conditions may include both communicable and noncommunicable diseases. The list may include those diseases that are either known to be, or suspected of being, transmitted by milk or milk-based products. The list shall also include, but not be limited to, diphtheria, listeria, salmonella, shigella, streptococcal infection in food handlers or dairy workers, and typhoid. The list may be modified at any time by the department, after consultation with the California Conference of Local Health Officers. Modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as a regulation, except that the revised list shall be filed with the Secretary of State and printed in the California Code of Regulations as required under subdivision (d). Those diseases listed as reportable shall be properly reported as required to the department by the health officer.

(b) The department may from time to time adopt and enforce regulations requiring strict or modified isolation, or quarantine, for any of the contagious, infectious, or communicable diseases, if in the opinion of the department the action is necessary for the protection of the public health.

(c) The health officer may require strict or modified isolation, or quarantine, for any case of contagious, infectious, or communicable disease, when this action is necessary for the protection of the public health.

(d) The list established pursuant to subdivision (a) and any subsequent modifications shall be published in Title 17 of the California Code of Regulations.

(e) Notwithstanding any other provision of law, no civil or criminal penalty, fine, sanction, finding, or denial, suspension, or revocation of licensure for any person or facility may be imposed based upon a failure to provide the notification of a reportable disease or condition that is required under this section, unless the disease or condition that is required to be reported was printed in the California Code of Regulations at least six months prior to the date of the claimed failure to report.

(f) Commencing July 1, 2009, or within one year of the establishment of a state electronic laboratory reporting system, whichever is later, a report generated pursuant to this section, or Section 121022, by a laboratory shall be submitted electronically in a manner specified by the department. The department shall allow laboratories that receive incomplete patient information to report the name of the provider who submitted the request to the local health officer.

(g) The department may through its Internet Web site and via electronic mail advise out-of-state laboratories that are known to the department to test specimens from California residents of the new reporting requirements.

SEC. 1.5. Section 120130 of the Health and Safety Code is amended to read:

120130. (a) The department shall establish a list of reportable diseases and conditions. For each reportable disease and condition, the department shall specify the timeliness requirements related to the reporting of each disease and condition, and the mechanisms required for, and the content to be included in, reports made pursuant to this section. The list of reportable diseases and conditions may include both communicable and noncommunicable diseases. The list may include those diseases that are either known to be, or suspected of being, transmitted by milk or milk-based products. The list may be modified at any time by the department, after consultation with the California Conference of Local Health Officers. Modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as a regulation, except that the revised list shall be filed with the Secretary of State and printed in the California Code of Regulations as required pursuant to subdivision (e). Those diseases listed as reportable shall be properly reported as required to the department by the health officer.

(b) The department shall establish a list of communicable diseases and conditions for which clinical laboratories shall submit a culture or a specimen to the local public health laboratory to undergo characterization. The list shall set forth the conditions under which the culture and specimen shall also be submitted to the state public health laboratory to undergo further characterization. The list may be modified at any time by the department, after consultation with the California Conference of Local Health Officers and the California Association of Public Health Laboratory Directors. Both establishment and modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as a regulation, except that the initial list and any modifications shall be filed with the Secretary of State and printed in the California Code of Regulations as required pursuant to subdivision (e).

(c) The department may from time to time adopt and enforce regulations requiring strict or modified isolation, or quarantine, for any of the contagious, infectious, or communicable diseases, if in the opinion of the department the action is necessary for the protection of the public health.

(d) The health officer may require strict or modified isolation, or quarantine, for any case of contagious, infectious, or communicable disease, when this action is necessary for the protection of the public health.

(e) The lists established pursuant to subdivisions (a) and (b) and any subsequent modifications shall be published in Title 17 of the California Code of Regulations.

(f) Notwithstanding any other provision of law, no civil or criminal penalty, fine, sanction, finding, or denial, suspension, or revocation of licensure for a licensed physician and surgeon or a clinical laboratory may be imposed based upon a failure to provide the notification of a reportable disease or condition or to provide the submission of a culture or specimen that is required pursuant to this section, unless the name of the disease or condition that is required to be reported or for which the culture or specimen is required to be submitted was printed in the California Code of Regulations and the department notified the licensed physician and surgeon or clinical laboratory of the disease or condition at least six months prior to the date of the claimed failure to report or submit.

(g) Commencing July 1, 2009, or within one year of the establishment of a state electronic laboratory reporting system, whichever is later, a report generated pursuant to this section or Section 121022 by a laboratory shall be submitted electronically in a manner specified by the department. The department shall allow laboratories that receive incomplete patient information to report the name of the provider who submitted the request to the local health officer.

(h) The department may, through its Internet Web site and via electronic mail, advise out-of-state laboratories that are known to the department to test specimens from California residents of the new reporting requirements.

SEC. 2. Section 121022 of the Health and Safety Code is amended to read:

121022. (a) To ensure knowledge of current trends in the HIV epidemic and to ensure that California remains competitive for federal HIV and AIDS funding, health care providers and laboratories shall report cases of HIV infection to the local health officer using patient names. Local health officers shall report unduplicated HIV cases by name to the department.

(b) (1) Health care providers and local health officers shall submit cases of HIV infection pursuant to subdivision (a) by courier service, United States Postal Service express mail or registered mail, other traceable mail, person-to-person transfer, facsimile, or electronically by a secure and confidential electronic reporting system established by the department.

(2) This subdivision shall be implemented using the existing resources of the department.

(c) The department and local health officers shall ensure continued reasonable access to anonymous HIV testing through alternative testing sites, as established by Section 120890, and in consultation with HIV planning groups and affected stakeholders, including representatives of persons living with HIV and health officers.

(d) The department shall promulgate emergency regulations to conform the relevant provisions of Article 3.5 (commencing with Section 2641.5) of Chapter 4 of Title 17 of the California Code of Regulations, consistent with this chapter, within one year of the effective date of this section.

(e) Pursuant to Section 121025, reported cases of HIV infection shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(f) State and local health department employees and contractors shall be required to sign confidentiality agreements developed by the department that include information related to the penalties for a breach of confidentiality and the procedures for reporting a breach of confidentiality, prior to accessing confidential HIV-related public health records. Those agreements shall be reviewed annually by either the department or the appropriate local health department.

(g) No person shall disclose identifying information reported pursuant to subdivision (a) to the federal government, including, but not limited to, any agency, employee, agent, contractor, or anyone else acting on behalf of the federal government, except as permitted under subdivision (b) of Section 121025.

(h) (1) Any potential or actual breach of confidentiality of HIV-related public health records shall be investigated by the local health officer, in coordination with the department, when appropriate. The local health officer shall immediately report any evidence of an actual breach of confidentiality of HIV-related public health records at a city or county level to the department and the appropriate law enforcement agency.

(2) The department shall investigate any potential or actual breach of confidentiality of HIV-related public health records at the state level, and

shall report any evidence of such a breach of confidentiality to an appropriate law enforcement agency.

(i) Any willful, negligent, or malicious disclosure of cases of HIV infection reported pursuant to subdivision (a) shall be subject to the penalties prescribed in Section 121025.

(j) Nothing in this section shall be construed to limit other remedies and protections available under state or federal law.

SEC. 3. Section 121025 of the Health and Safety Code is amended to read:

121025. (a) Public health records relating to human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS), containing personally identifying information, that were developed or acquired by a state or local public health agency, or an agent of that agency, shall be confidential and shall not be disclosed, except as otherwise provided by law for public health purposes or pursuant to a written authorization by the person who is the subject of the record or by his or her guardian or conservator.

(b) In accordance with subdivision (f) of Section 121022, a state or local public health agency, or an agent of that agency, may disclose personally identifying information in public health records, as described in subdivision (a), to other local, state, or federal public health agencies or to corroborating medical researchers, when the confidential information is necessary to carry out the duties of the agency or researcher in the investigation, control, or surveillance of disease, as determined by the state or local public health agency.

(c) Except as provided in paragraphs (1) to (3), inclusive, any disclosure authorized by subdivision (a) or (b) shall include only the information necessary for the purpose of that disclosure and shall be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization, as described in subdivision (a).

(1) Notwithstanding any other provision of law, the following disclosures shall be authorized for the purpose of enhancing completeness of HIV/AIDS, tuberculosis, and sexually transmitted disease coinfection reporting to the federal Centers for Disease Control and Prevention (CDC):

(A) The local public health agency HIV surveillance staff may further disclose the information to the health care provider who provides HIV care to the HIV-positive person who is the subject of the record for the purpose of assisting in compliance with subdivision (a) of Section 121022.

(B) Local public health agency tuberculosis control staff may further disclose the information to state public health agency tuberculosis control staff, who may further disclose the information, without disclosing patient identifying information, to the CDC, to the extent the information is requested by the CDC and permitted by subdivision (b), for purposes of the investigation, control, or surveillance of HIV and tuberculosis coinfections.

(C) Local public health agency sexually transmitted disease control staff may further disclose the information to state public health agency sexually

transmitted disease control staff, who may further disclose the information, without disclosing patient identifying information, to the CDC, to the extent it is requested by the CDC, and permitted by subdivision (b), for the purposes of the investigation, control, or surveillance of HIV and syphilis, gonorrhea, or chlamydia coinfection.

(2) Notwithstanding any other provision of law, the following disclosures shall be authorized for the purpose of facilitating appropriate HIV/AIDS medical care and treatment:

(A) State public health agency HIV surveillance staff, AIDS Drug Assistance Program staff, and care services staff may further disclose the information to local public health agency staff, who may further disclose the information to the HIV-positive person who is the subject of the record, or the health care provider who provides his or her HIV care, for the purpose of proactively offering and coordinating care and treatment services to him or her.

(B) AIDS Drug Assistance Program staff and care services staff in the State Department of Public Health may further disclose the information directly to the HIV-positive person who is the subject of the record or the health care provider who provides his or her HIV care, for the purpose of proactively offering and coordinating care and treatment services to him or her.

(3) Notwithstanding any other provision of law, for the purpose of facilitating appropriate medical care and treatment of persons coinfecting with HIV, tuberculosis, and syphilis, gonorrhea, or chlamydia, local public health agency sexually transmitted disease control and tuberculosis control staff may further disclose the information to state or local public health agency sexually transmitted disease control and tuberculosis control staff, the HIV-positive person who is the subject of the record, or the health care provider who provides his or her HIV, tuberculosis, and sexually transmitted disease care.

(4) For the purposes of paragraphs (2) and (3), “staff” does not include nongovernmental entities.

(d) No confidential public health record, as defined in subdivision (c) of Section 121035, shall be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(e) (1) Any person who negligently discloses the content of any confidential public health record, as defined in subdivision (c) of Section 121035, to any third party, except pursuant to a written authorization, as described in subdivision (a), or as otherwise authorized by law, shall be subject to a civil penalty in an amount not to exceed five thousand dollars (\$5,000), plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose record was disclosed.

(2) Any person who willfully or maliciously discloses the content of any confidential public health record, as defined in subdivision (c) of Section 121035, to any third party, except pursuant to a written authorization, or as otherwise authorized by law, shall be subject to a civil penalty in an amount not less than five thousand dollars (\$5,000) and not more than twenty-five

thousand dollars (\$25,000), plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose confidential public health record was disclosed.

(3) Any person who willfully, maliciously, or negligently discloses the content of any confidential public health record, as defined in subdivision (c) of Section 121035, to any third party, except pursuant to a written authorization, or as otherwise authorized by law, that results in economic, bodily, or psychological harm to the person whose confidential public health record was disclosed, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine of not to exceed twenty-five thousand dollars (\$25,000), or both, plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose confidential public health record was disclosed.

(4) Any person who commits any act described in paragraph (1), (2), or (3), shall be liable to the person whose confidential public health record was disclosed for all actual damages for economic, bodily, or psychological harm that is a proximate result of the act.

(5) Each violation of this section is a separate and actionable offense.

(6) Nothing in this section limits or expands the right of an injured person whose confidential public health record was disclosed to recover damages under any other applicable law.

(f) In the event that a confidential public health record, as defined in subdivision (c) of Section 121035, is disclosed, the information shall not be used to determine employability, or insurability of any person.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 120130 of the Health and Safety Code proposed by both this bill and AB 2786. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 120130 of the Health and Safety Code, and (3) this bill is enacted after AB 2786, in which case Section 1 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.